

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHARLES D. SIMMONS

Claimant

VS.

BILLIARDS & GAMES, INC.

Uninsured Respondent

Docket No. **1,035,072**

ORDER

Claimant requests review of the May 8, 2008 preliminary hearing Order Nunc Pro Tunc entered by Administrative Law Judge Thomas Klein.

ISSUES

The claimant alleged he suffered injuries in an automobile accident when returning to his home in a company provided vehicle after making a service call. Claimant notified his supervisor of the accident and later gave his supervisor medical bills as well as a police report regarding the accident. The respondent denied claimant provided timely written claim. The Administrative Law Judge (ALJ) found "that turning over bills and a police report to his employer do not constitute written claim under K.S.A. 44-520a."

Claimant requests review of whether or not he gave timely written claim within 200 days. Claimant argues that his uncontroverted testimony established that he gave the medical bills to his supervisor within 200 days of the accident with the intent that compensation be paid.

The sole issue for Board review is whether claimant provided respondent timely written claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Mr. Simmons was at home when he received a call on March 19, 2006, from Ronnie Cazal, respondent's owner, to attend to a service call. As he was driving home after doing the work he was involved in an automobile accident. Claimant testified his head hit the

steering wheel, his jaw became unhinged and his knee hurt. Claimant was transported by ambulance to the hospital's emergency room and kept for 24-hour observation. Claimant called Mr. Cazel the next day and told him about the accident. Approximately a week later claimant started receiving the medical bills. He gave them to Mr. Cazel so that they could be paid by respondent's insurance. Claimant testified:

Q. Did you receive bills in the mail shortly after the accident?

A. Yeah, I started receiving them a week later; and I started turning them in to Ronnie Cazel.

Q. Why did you turn them in to Ronnie Cazel?

A. My understanding was his insurance was supposed to pay.

Q. Did you think that they were supposed to pay because you got injured on the job?

A. Yes.¹

In response to a leading question on cross examination the claimant agreed that when he provided the medical bills to Mr. Cazel the claim was being pursued as an automobile insurance claim because he did not know anything about workers compensation. But he later emphasized that he did not know what insurance was available to pay the bills and he simply intended that the bills be paid by respondent. Claimant testified:

Q. Charles, at the time that you submitted the bills from EMS and your hospital bill to Mr. Cazel, did you know what insurance coverage there might be available to pay these bills?

A. No, I didn't. All I know is - -

Q. At that time.

A. At that time, when I left down there, the hospital told me to make copies of these and send them to my boss's insurance.

Q. To your employer?

A. Yeah, because he was requesting them.

Q. When you submitted them to - -

A. Ronnie Cazel.

¹ P.H. Trans. at 9.

Q. - - Ronnie Cazel, did you intend to have Ronnie Cazel pay those bills?

A. Yes, I did. It wasn't until two months later he refused.²

Finally claimant explained that he told Mr. Cazel that he considered the accident to be work-related because he was on the clock until he got home and that is the reason Mr. Cazel requested that claimant give him all the medical bills.³

The written claim statute, K.S.A. 44-520a(a), provides in part:

No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation; or within one (1) year after the death of the injured employee if death results from the injury within five (5) years after the date of such accident.

The Kansas Supreme Court has stated that the purpose for written claim is to enable the employer to know about the injury in time to investigate it.⁴ The same purpose or function has, of course, been ascribed to the requirement for notice found in K.S.A. 44-520.⁵ Written claim is, however, one step beyond notice in that it requires an intent to ask the employer to pay compensation. In *Fitzwater*⁶, the Kansas Supreme Court described the test as follows:

In determining whether or not a written instrument is in fact a claim the court will examine the writing itself and all the surrounding facts and circumstances, and after considering all these things, place a reasonable interpretation upon them to determine what the parties had in mind. The question is, did the employee have in mind compensation for his injury when the instrument was signed by him or on his behalf, and did he intend by it to ask his employer to pay compensation?

Whether an instrument constitutes a written claim or whether a claim for compensation has been timely filed are primarily questions of fact. A particular form of

² P.H. Trans. at 25-26.

³ *Id.*, at 26.

⁴ *Craig v. Electrolux Corporation*, 212 Kan. 75, 82, 510 P.2d 138 (1973).

⁵ *Pike v. Gas Service Co.*, 223 Kan. 408, 573 P.2d 1055 (1978).

⁶ *Fitzwater v. Boeing Airplane Co.*, 181 Kan. 158, 166, 309 P.2d 681 (1957).

written claim is not required. In determining whether a document constitutes written claim, the trier of fact must examine the various writings and all the surrounding facts and circumstances, and after considering all of these things, place a reasonable interpretation upon them to determine what the parties intended. The claimant is not required to sign the document, and written claim may be presented in any manner and through any person or agency. Claim may also be served upon the employer's duly authorized agent.⁷

The claimant's uncontroverted testimony established that he gave Mr. Cazel the medical bills because he intended to have them paid. Based upon the evidence compiled to date, this Board Member finds claimant intended to claim compensation benefits when he presented the bills for payment by the respondent. And the bills were presented to respondent well within the 200-day statutory requirement. The ALJ's Order Nunc Pro Tunc is reversed as claimant met his burden of proof that he provided timely written claim. The case is remanded for further proceedings, if necessary, to address the remaining issues.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁸ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2007 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁹

WHEREFORE, it is the finding of this Board Member that the Order Nunc Pro Tunc of Administrative Law Judge Thomas Klein dated May 8, 2008, is reversed and this case is remanded to the Administrative Law Judge for a determination of the remaining issues.

IT IS SO ORDERED.

Dated this 31st day of July 2008.

HONORABLE DAVID A. SHUFELT
BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
Ronald Laskowski, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge

⁷ *Ours v. Lackey*, 213 Kan. 72, 515 P.2d 1071 (1973).

⁸ K.S.A. 44-534a.

⁹ K.S.A. 2007 Supp. 44-555c(k).